



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD**  
ATTORNEY GENERAL

March 31, 1953

Hon. William H. Scott  
Criminal District Attorney  
Civil Courts Building  
Houston 2, Texas

Opinion No. S-22

Re: Applicability of the motor  
vehicle transfer tax to the  
submitted transaction between  
Johnston Oil Field Service  
Corporation and Johnston  
Testers, Inc.

Attention: Hon. James R. Gough  
Assistant District Attorney

Dear Sir:

You request the opinion of this office as to whether a certain transfer of motor vehicles between the Johnston Oil Field Service Corporation and Johnston Testers, Inc. is subject to the tax levied by Article 7047k, Civil Statutes.

The facts seem to be as follows: All of the capital stock of Johnston Oil Field Service Corporation, a Texas corporation, was acquired by the Johnston Testers, Inc., a Delaware corporation, with a permit to do business in the State of Texas. This being accomplished the Johnston Oil Field Service Corporation was liquidated by transfer of all the assets of the Johnston Oil Field Service Corporation, including the motor vehicles owned and registered by the Johnston Oil Field Service Corporation. There was in fact a merger of the Johnston Oil Field Service Corporation with the Johnston Testers, Inc., without consideration.

We are of the opinion that under the conceded facts this transaction does not constitute a taxable sale of the motor vehicles under the provisions of Article 7047k, V.C.S. There is no case in this State or in any other jurisdiction which our research has revealed exactly in point. In the case of Jones, Collector of Internal Revenue v. Noble Drilling Company, Incorporated, 135 Fed. 2d 721, involving facts somewhat similar, the court said:

"The merger agreement was without consideration.  
There was a statutory merger, not a mere sale of assets."

It appears that if there be a merger of two corporations, either by contract or by operation of law, without consideration

moving to the liquidated corporation, it does not have the effect of converting the transfer of the assets of the liquidated corporation to the surviving corporation into a sale of the assets.

We do not think the facts here are analagous to the facts upon which our previous Opinion No. V-36 (1947) is based. A transfer of the motor vehicles by the partnership to the corporation in Opinion No. V-36 was concededly based upon the value of the motor vehicles transferred, hence upon a substantial and ascertainable consideration. Such is not the case here.

SUMMARY

There is not a sale of motor vehicles within the provisions of the motor vehicle sales tax imposed by Article 7047k upon the transfer of motor vehicles from a liquidated corporation to the surviving corporation by a merger of the corporations when the merger was without consideration.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

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APPROVED:

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LPL:MG:wc